IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

INCOME TAX REFERENCE No 265 of 1992
and
Income Tax Reference No.265A of 1992

For Approval and Signature:

HON'BLE MR.JUSTICE M.S.SHAH
and
HON'BLE MR.JUSTICE A.M.KAPADIA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

COMMISSIONER OF INCOME-TAX

Versus

KAMDAR ASSOCIATES

Appearance:

1. INCOME TAX REFERENCE No. 265 of 1992
MR MANISH R BHATT for Petitioner No. 1
MR RK PATEL for Respondent No. 1

CORAM : HON'BLE MR.JUSTICE M.S.SHAH
and
HON'BLE MR.JUSTICE A.M.KAPADIA

Date of decision: 15/01/2004

COMMON ORAL JUDGEMENT

(Per : HON'BLE MR.JUSTICE M.S.SHAH)

1. In these references at the instance of the Revenue, the following question is referred for our opinion, in respect of the assessment years 1984-85 and 1985-86:

"Whether, the Appellate Tribunal is right in law and on facts in directing the I.T.O. to treat the ship breaking as manufacturing activity and to grant relief under section 80 HHA?"

2. We have heard Mr. M.R. Bhatt, learned Standing Counsel for the revenue and Mr. R.K. Patel, learned counsel for the respondent - assessee.

3. Our attention is drawn to the decision of another Division Bench of this Court in Commissioner of Income-Tax v. Vijay Ship Breaking Corporation, 2003 (261) ITR 113, taking the view that ship breaking activity was not an activity of manufacture or production of any article or thing for the purposes of availing of the benefit of deductions under sections 80HH and 80-I of the Income-Tax Act, 1961. Since the provisions of Section 80HH-A are similar, in so far as the controversy involved in the present references is concerned, we respectfully follow the aforesaid decision and answer the question in the negative, i.e., in favour of the Revenue and against the assessee.

4. At this stage, Mr. R.K. Patel, learned counsel for the respondent - assessee, states that the aforesaid decision of this court has been challenged before the Hon'ble Supreme Court and the Hon'ble Supreme Court has granted leave to appeal and, therefore, he prays for certificate under Section 261 of the Income-Tax Act, 1961.

5. In view of the aforesaid statement that the SLP against the aforesaid decision is granted, which statement is not disputed by the learned counsel for the Revenue, we certify this to be a fit case for appeal to the Hon'ble Supreme Court.

6. The references accordingly stand disposed of.

(M.S. Shah, J.)

(A.M. Kapadia, J.)

(karan)